IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3704 OF 2004

Mr.Mahavir Motilal Jain ...Applicant

Versus

The State of Maharashtra ...Respondent

.....

Mr.A.H.H.Ponda for Applicant.

Mr.A.S.Gadkari, A.P.P. for Respondent.

.....

CORAM: A.M.KHANWILKAR, J.

SEPTEMBER 22, 2004.

P.C.

1. Heard Counsel for the parties. This is an application filed by Mahavir Motilal Jain for granting anticipatory bail in connection with C.R.No.34/04 registered with GB CB CID Unit No.3. The said offence has been essentially registered against the four accused. The gravamen of allegation is that accused Shrinivasan Naidu and Antonio Rodrigues approached Danabhai Jewellers & Sons and persuaded the said jeweller to sell certain jewellery to the said accused in the month

of April 2004. They had first approached him on 8th April 2004 and expressed their desire to purchase some jewellery and again on 9th April 2004, the said Danabhai Jewellers being satisfied with the representation made by the said accused, sold certain jewellery to said accused on 9th April 2004. It is the prosecution case that the said jewellery has been pledged with the Applicant on 10th April 2004 by one Khwaja Hussain Shaikh, against which, the Applicant gave sum of Rs.2,00,000/- (Rupees Two Lakhs) to said Khwaja Hussain. The offence which is registered against the four accused is for various offences including offences punishable under Sections 406, 420 and 34 of the Indian Penal Code. The argument canvassed on behalf of the Applicant is that the Applicant cannot be made responsible for the transaction which took place between Danabhai Jewellers & Sons and the four accused named in the F.I.R. According to the Applicant, he is involved merely because the same jewellery has been pledged with him. The fact remains that the Applicant has handed over the jewellery identified by the complainant to the Police during the investigation. In the background

of these facts, it is contended on behalf of the Applicant that there can be no charge of breach of trust, relying on the decision of the Apex Court in the case of **State of Gujarat vs. Jaswantlal Nathalal reported in AIR 1968 SC 700** because the prosecution case plainly proceeds on the allegation that there was transaction of sale between the accused and said Danabhai Jewellers & Sons. If it is so, it cannot be a case of criminal breach of trust.

2. It is, however, contended that for the charge of cheating, the Applicant cannot be implicated because the Applicant has no causal connection with the events that unfolded prior to 10th April 2004 because the jewellery has been pledged with the Applicant only on 10th April 2004 by one Khwaja Hussain Shaikh, with whom, the Applicant had transaction even on earlier occasion.

3. The argument of Public Prosecutor is that the the Applicant ought to have verified the source of procurement of jewellery by Khwaja Hussain before accepting the same and parting with

consideration of Rs.2,00,000/- (Rupees Two Lakhs). On that basis, the learned A.P.P. contends that the Applicant is also involved in the conspiracy because it is immediately on the next day of the procurement of jewellery from Danabhai Jewellers & Sons, the same was pledged with the Applicant. To support the contention that the Applicant is party of the conspiracy, reliance is placed only on the statement of Khwaja Hussain recorded by the Police during investigation. However, even on fair reading of the said statement, there is nothing to indicate that the Applicant was in close association of Khwaja Hussain or that the Applicant had knowledge about the activities of Khwaja Hussain. Since there is no other material forthcoming, the appropriate course, to my mind, is to release the Applicant on the anticipatory bail on the following terms :

(a) The Applicant is released on anticipatory in relation to C.R.No.34/04 registered with GB, CB, CID on executing personal bond in the sum of Rs.1,00,000/- (Rupees One Lakh) with two sureties in the like amount.

(b) The Applicant shall report to the concerned Police Station between 10.00 a.m. and 5.00 p.m. on first Saturday of every month or on such other day and time as may be required by the Investigating Officer.

(c) The Applicant shall not influence the prosecution witnesses or tamper with the prosecution evidence in any manner whatsoever.

(d) The Applicant shall surrender passport to the Investigating Officer, if any. If the Applicant does not possess any passport, affidavit to that effect be filed in this Court within one week from the date of release.

. Application allowed on the above terms.

A.M.KHANWILKAR, J.